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ADMIRALTY: JURISDICTION: INCLUSION OF HYDROAEROPLANE WITHIN ADMIRALTY AND MARITIME JURISDICTION—"The problem of flight is peculiarly a problem of uniform law . . . The backwardness of our commercial development [of aeronautics] has been the subject of unfavorable comment; [and] the fault is with the law. . . . The law respecting aeronautics is the one fundamental vital problem of the actual commercial development of the art at the present time." With these statements the Special Committee on the Law of Aviation urged the members of the American Bar Association "to give their attention to the fundamental problems of jurisprudence and especially of constitutional law involved in the proper solution of the demands of aeronautics."<sup>1</sup>

The members of the committee report that the two fundamental juristic problems of aeronautics in this country are: (1) whether control should be exerted by the national government; and (2) whether the power of such control should be conferred by constitutional amendment, or seized under the claim of the exercise of existing powers.<sup>2</sup> The solution of the first of these problems seems to be clear and single: "the demands of progress require a uniform law operative throughout the country, and emanating from a single source of power; and the national government is obviously this single source."<sup>3</sup> The solution of the second problem appears to be much more difficult. The members of the committee believe that the power to control aeronautics should be conferred upon the national government by constitutional amendment.<sup>4</sup> But there are others who, recognizing the difficulty of awakening the people and their legislatures to that degree of enthusiasm which will carry through a constitutional amendment, believe that national control of aeronautics will best be accomplished by assuming such control to be included within the scope of existing powers.<sup>5</sup> And among those who adopt this view, the most popular theory seems to be that aircraft should be included within the admiralty and maritime jurisdiction.<sup>6</sup>

In *The Crawford Bros. No. 2*<sup>7</sup> a court of admiralty refused to include within its jurisdiction a libel for repairs to an aeroplane which had fallen into navigable waters. In that case counsel,

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<sup>1</sup> Report of the Special Committee on the Law of Aviation to the Executive Committee of the American Bar Association, (1921) Reports of American Bar Association, Vol. XLVI, pp. 501, 507, 498.

<sup>2</sup> *Ibid.*, at p. 505.

<sup>3</sup> *Ibid.*, at p. 506.

<sup>4</sup> *Ibid.*, at pp. 504, 505, 506, 514, 525, and 530.

<sup>5</sup> The powers to raise and maintain an army and a navy, to make treaties, to maintain international relations, to regulate foreign and interstate commerce, and to raise revenue all offer possibilities.

<sup>6</sup> It appears that this is the view held by President Harding and by the National Advisory Committee for Aeronautics. Report of the Special Committee on the Law of Aviation to the Executive Committee of the American Bar Association, *supra*, n. 1, at pp. 523-526.

<sup>7</sup> (Dist. Ct., W. D. Wash., S. D., 1914) 215 Fed. 269, commented upon in 3 California Law Review, 143, 28 Harvard Law Review, 200, and 49 American Law Review, 599.

pointing to the similarity of aerial navigation and navigation upon the seas, argued that jurisdiction over both could well be exercised by the same court, and contended that, as jurisdiction in admiralty has, in the past, been extended to meet the needs of commerce and the questions arising therefrom, the admiralty should now concern itself with the questions arising from aerial navigation, without awaiting legislative action. The court held, however, that, "in the absence of legislation conferring jurisdiction" upon the court of admiralty, questions concerning aircraft should be relegated to courts of general jurisdiction. But this decision did not consider the question of jurisdiction over aircraft capable also of navigation upon the water.

Now a case has arisen involving the question of jurisdiction over a hydroaeroplane. In *Reinhardt v. Newport Flying Service Corporation*<sup>8</sup> the court held that an employee injured by a hydroaeroplane moored in navigable waters is not entitled to compensation under the state workmen's compensation law, for "the jurisdiction of the admiralty excludes the jurisdiction of the commission."<sup>9</sup> "The latest of man's devices for locomotion has invaded the navigable waters, the most ancient of his highways. Riding at anchor is a new craft which would have mystified the Lord High Admiral in the days when he was competing for jurisdiction with Coke and the courts of common law. . . . The craft, though new, is subject while afloat to the tribunals of the sea. . . . A hydroaeroplane, while afloat upon waters capable of navigation, is subject to the admiralty, because location and function stamp it as a means of water transportation. . . . When it is in the fulfilment of its function as a traveler through water, and has put aside its functions and capacities as a traveler through air, [a hydroaeroplane] is a vessel."<sup>10</sup> The court indicates moreover that the rescue of a hydroaeroplane, found adrift on the high seas, would be salvage; and that, in case of collision in which such hydroaeroplane, while floating upon the water, causes injury to man or vessel, there should be a remedy in admiralty against the offending *res*.

These two decisions indicate that an aeroplane, or hydroaeroplane, while in the air, is not subject to the admiralty;<sup>11</sup> but that a hydroaeroplane, while afloat upon waters capable of naviga-

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<sup>8</sup> (Nov. 22, 1921) 232 N. Y. 115, 133 N. E. 371, commented upon in 7 Cornell Law Quarterly, 179, and 31 Yale Law Journal, 437.

<sup>9</sup> Citing, of course, *Knickerbocker Ice Co. v. Stewart* (1919) 253 U. S. 149, 40 Sup. Ct. Rep. 438, 64 L. Ed. 834. From the facts as given in the opinion, it appears that the State Industrial Commission might have been allowed to take jurisdiction of this injury in accordance with the principles announced in *Grant Smith-Porter Ship Co. v. Rhode* (Jan. 3, 1922) 66 L. Ed. 172, 42 Sup. Ct. Rep. 157, commented upon *infra*, 10 California Law Review, 234.

<sup>10</sup> *Reinhardt v. Newport Flying Service Corporation*, *supra*, n. 8.

<sup>11</sup> *The Crawford Bros. No. 2*, *supra*, n. 7; *Reinhardt v. Newport Flying Service Corporation*, *supra*, n. 8.

tion, is subject to that jurisdiction.<sup>12</sup> As has been suggested,<sup>13</sup> it is evident that cases will arise where the application of the one or the other of these rules will depend upon the determination of a difficult question of fact. But another problem, even more perplexing, will surely arise, at least in cases of contract. The admiralty jurisdiction in tort cases may depend solely upon locality;<sup>14</sup> but in cases of contract, jurisdiction is determined by the nature of the transaction.<sup>15</sup> If a hydroaeroplane is to be sometimes "a vessel" and sometimes "not a vessel," what test shall determine whether a given contract relates to one or the other of its characters? And where the contract is concerned with both sorts of locomotion, which court shall have jurisdiction? These questions cannot be answered by the application of existing admiralty law.

The logical soundness of the conclusion of the American Bar Association's committee is beyond dispute; if the law of aeronautics is to develop uniformly, satisfactorily, and with certainty, jurisdiction must be conferred upon the Federal government by amendment to the Constitution. If, because constitutional amendment is not feasible, national control must be accomplished by bringing aeronautics within the scope of existing powers, the courts must cope with many difficult problems.<sup>16</sup> The decisions will be watched with keenest interest.

R. V.

ADMIRALTY: JURISDICTION: WORKMEN'S COMPENSATION ACTS—In the case of *Grant Smith-Porter Ship Company v. Rhode*<sup>1</sup> the Supreme Court of the United States has just held that a carpenter engaged in the construction of a vessel which had been launched so as to be within the jurisdiction of admiralty for some purposes, and who had contracted with his employer with reference to the state workmen's compensation law, is entitled to compensation under that law for injuries suffered on the vessel, and that such remedy is exclusive, recovery under such act being, by its terms,

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<sup>12</sup> Reinhardt v. Newport Flying Service Corporation, *supra*, n. 8.

<sup>13</sup> 7 Cornell Law Quarterly, 179; 31 Yale Law Journal, 437.

<sup>14</sup> The Plymouth (1865) 70 U. S. (3 Wall.) 20, 18 L. Ed. 125; North Pac. S. S. Co. v. Hall Bros. Marine Ry. and Shipbuilding Co. (1919) 249 U. S. 119, 125, 39 Sup. Ct. Rep. 221, 63 L. Ed. 510. There is, however, a tendency now to hold that, in cases of tort, locality is not alone determinative of jurisdiction, and that the admiralty will not take jurisdiction unless the tort in question was also maritime in nature. See note in 5 California Law Review, 492.

<sup>15</sup> Insurance Co. v. Dunham (1870) 78 U. S. (11 Wall.) 1, 26, 20 L. Ed. 90; North Pac. S. S. Co. v. Hall Bros. Marine Ry. and Shipbuilding Co., *supra*, n. 14.

<sup>16</sup> For a comprehensive discussion of the problems arising in the law of aeronautics see Problems in Aviation Law, by Professor George G. Bogert, in 6 Cornell Law Quarterly, 271.

<sup>1</sup> (Jan. 3, 1922) 66 L. Ed. 172, 42 Sup. Ct. Rep. 157.